Lee Hiok Ping & Ors v Lee Hiok Woon & Ors

HIGH COURT (SINGAPORE) – SUIT NOS 1401 OF 1973 AND 2457 OF 1981
CHAO HICK TIN JC
18 OCTOBER 1988

Civil Procedure – Solicitor's bill of costs for lump sum delivered – Itemized bill for larger sum delivered subsequently – Taxation – Subsequent bill submitted for taxation – Difference between the two bills deducted – Whether taxation actually undertaken

Evidence – Estoppel – Evidence Act (Cap 97, 1985 Ed), s 117

Legal Profession – Solicitor's bill of costs for lump sum delivered – Itemized bill for larger sum delivered later – Taxation – Second bill taxed – No order of court for taxation of second bill obtained – Consent of clients to taxation of second bill not given – Whether solicitors entitled to substitute one bill for another – Legal Profession Act (Cap 161, 1985 Ed), s 117

The fourth, fifth and sixth defendants, the applicants in these proceedings, sought an order to set aside a notice of taxation and the accompanying bill of costs and the subsequent taxation proceedings. The bill in question was that of M/s Rodyk & Davidson who were the previous solicitors for the applicants in Suit Nos 1401 of 1973 and 2457 of 1981. M/s Rodyk & Davidson had rendered a bill of costs ('the first bill') for a lump sum of $150,177.50 plus the sum of $1,322.50 for disbursements. The applicants wrote to M/s Rodyk & Davidson stating that they 'would like to have the bill taxed by the High Court before we settle it, please'. Subsequently, M/s Rodyk & Davidson put up a revised itemized bill of costs ('the second bill') for a total sum of $197,586.50 plus the sum of $1,322.50 in respect of disbursements for taxation. M/s Rodyk & Davidson forwarded the second bill to the applicants, who were informed that it would be taxed by the registrar on 20 January 1987 at 10 am and that if they needed any advice on it to contact M/s Rodyk & Davidson. The second bill was taxed by the deputy registrar on 20 January 1987 on which occasion, the applicants were not present. The deputy registrar was informed that the first bill for the lump sum of $150,177.50 plus disbursements was put up. He then taxed off the total sum of $47,409 from the second bill.

It was contended for the applicants that M/s Rodyk & Davidson were precluded from issuing the second bill for the following reasons:

(a) M/s Rodyk & Davidson were bound by their first bill and may not, without leave of the court, file another bill for taxation;
(b) considering s 117(3) of the Legal Profession Act (Cap 161, 1985 Ed) there must be consent from both sides that the second bill be taxed; and
(c) if M/s Rodyk & Davidson were to have the liberty to submit a fresh bill which was different from the earlier bill, it would give rise to undue pressure being exerted on clients to settle the earlier bill.

It was also contended for the applicants that even though the deputy registrar was informed that the first bill was only for a lump sum of $151,000, the fact that a much larger subsequent bill had been put up had prejudiced the applicants' position. The court was asked to invoke its inherent jurisdiction to make the order sought. It was contended for M/s Rodyk & Davidson that the court could not resort to its inherent jurisdiction to set aside the taxation and that any objection intended to be taken should have been taken on the date of taxation itself and further that what the applicants should have done was to ask for a review under O 59 r 34 of the Rules of the Supreme Court 1970. M/s Rodyk & Davidson also relied on s 117 of the Evidence Act in raising the issue of estoppel based on the failure on the part of the applicants to attend the taxation on 20 January 1987.

Held, allowing the application:

(1) It is clear from s 117(1) & (3) of the Legal Profession Act that a solicitor may only have his bill taxed after having obtained an order of the court on a petition, unless there is consent by the solicitor and the client that the particular bill be taxed. In this case, in their letter, the applicants had expressly asked that the first bill be taxed. They did not ask for a fresh bill. Therefore there was no consent by the applicants to the second bill being taxed. Admittedly s 123 of the Legal Profession Act provides that a bill of costs for taxation as between solicitor and client 'shall be drawn in the manner provided by the Rules of the Supreme Court', which in effect means that it should be itemized. But it could not be argued that by requesting the first bill to be taxed, the applicants had therefore consented to a fresh bill being drawn up for a substantially increased amount. What should have been done by M/s Rodyk & Davidson was to have the first bill itemized and not draw up a fresh bill for a substantially different sum.

(2) M/s Rodyk & Davidson were entitled to substitute a fresh bill in place of the one tendered without leave of the court if there was an agreement between the parties to that effect.

(3) To allow a solicitor to freely substitute a bill would encourage pressure being brought to bear on the client to accept the earlier bill which the client had asked to be taxed in the first place. Every solicitor, before submitting his bill to a client, is to carefully scrutinize the amount of work he had put in for that client and make his claim accordingly. And he should and must be able to justify it when called upon to do so. To countenance otherwise would mean that the courts do encourage solicitors to bargain with clients and to put pressure on clients to accept the amount a solicitor would charge. It could open the door to the most undesirable or irresponsible kind of conduct and undermine the public's confidence in the integrity of the profession. In the absence of statutory provisions approving such a practice, the court was not inclined to sanction it. The legal profession is an honourable profession and must be seen to be so.

(4) The deputy registrar by merely deducting the difference between the first bill and the second bill did not tax any bill. The deputy registrar should have taxed the second bill without being restrained by the lump sum claimed in the first bill. M/s Rodyk & Davidson should have been required to justify all the items of claim. No such exercise was carried out. The taxation undertaken was no taxation at all.

(5) Estoppel did not apply in the circumstances of the case.

Cases referred to

1 *Re Bill of Costs of the Solicitors for the Trustees of the Estate of Syed Ahmad bin Abdulrahman Alsagoff (deceased)* [1978] 2 MLJ lxix (refd)
2 *Siew Kuen Williams* v *Yong Siew In* [1984] 1 MLJ 95 (distd)
3 *Loveridge* v *Botham* (1797) 1 Bos & Pul 49 (folld); 126 ER 772
4 *Re Carven* (1845) 8 Beav 436; 50 ER 171 (folld)

5 *Re Walters* (1845) 9 Beav 299; 50 ER 359 (follid)
6 *Re Heather* (1870) 5 Ch App 694; 18 WR 1079 (follid)
7 *Re Holroyde & Smith* (1881) 43 LT 722; 29 WR 599 (follid)
8 *Chappell* v *Mehta* [1981] 1 All ER 349 (follid)
9 *Re Tilleard* [1863] 32 Beav 476; 55 ER 187 (refd)
10 *Re Thompson* (1885) 30 Ch D 441 (refd)
11 *Re Taxation of Costs, Re Solicitors* [1943] KB 69 (refd)
12 *Re a Solicitor* [1943] Ch 48 (refd)
13 *Peter Thomas* v *Smith* The Times 2 May 1932 (refd)
14 *Haw Par Brothers International Ltd* v *Harry Lee Wee* [1980] 2 MLJ 8 (refd)

Legislation referred to
Evidence Act (Cap 97, 1985 Ed) s 117
Legal Profession Act (Cap 161, 1985 Ed) ss 106, 108, 117, 121, 123
Rules of the Supreme Court 1970 O 59 r 34
Legal Profession Act 1976 [Mal] s 121
Solicitors' Remuneration Act General Order 1920 [UK]
Solicitors' Remuneration (Gross Sum) Order 1934 [UK]

Asokan Govind for M/s Rodyk & Davidson.
M Karthigesu, amicus curiae, for the Law Society.
Neo Kee Heng (Miss) for the applicants.

Cur Adv Vult

Chao Hick Tin JC: This is an application made by the fourth, fifth and sixth defendants, the applicants in these proceedings, for an order to set aside a notice of taxation and the accompanying bill of costs and the subsequent taxation proceedings. The bill in question (No 64/1987) is that of M/s Rodyk & Davidson who were the previous solicitors for the applicants in Suit No 1401 of 1973 and Suit No 2457 of 1981.

The undisputed facts are these. On or about 17 April 1986 a bill of costs ('the first bill') was rendered by M/s Rodyk & Davidson to the applicants for a lump sum of $150,177.50 plus $1,322.50 for disbursements. The applicants in their letter of 16 May 1986 to Rodyk & Davidson stated that they 'would like to have *the bill* taxed by the High Court before we settle it please' (emphasis added). Subsequently on 24 November 1986, Rodyk & Davidson put up a revised itemized bill of costs ('the second bill') for a total sum of $197,586.50, plus $1,322.50 in respect of disbursements, for taxation. By a letter dated 5 January 1987, Rodyk & Davidson forwarded the second bill to the applicants, who were informed that the second bill would be taxed by the registrar on 20 January 1987 at 10 am and that if they needed any advice on the bill to contact Rodyk & Davidson. The second bill was accordingly taxed by the learned deputy registrar on 20 January 1987 at which proceedings the applicants were not present. The deputy registrar was informed that a first bill for a lump sum of $150,177.50, plus disbursements, was put up; he then taxed off $47,409 from the second bill.

On 18 March 1987, the present solicitors for the applicants wrote to Rodyk & Davidson inquiring as to the basis on which Rodyk & Davidson had put up the second bill for taxation without the applicants' consent and without an order of court granting leave to withdraw the first bill. In reply, Rodyk & Davidson stated that the second bill was taxed pursuant to s 120(3) (now s 117(3) of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act')). The present solicitors further wrote on 4 May 1987 to Rodyk & Davidson to stress that the applicants in their letter of 16 May 1986 requested Rodyk & Davidson to tax the first bill and not any other bill. On 11 May 1987, the present solicitors further telexed to state that in the light of *Re Bill of Costs of the Solicitors for the Trustees of the Estate of Syed Ahmad bin Abdulrahman Alsagoff (deceased)*,[1] Rodyk & Davidson were not entitled to present the second bill for taxation. Rodyk & Davidson replied by telex on the same date disagreeing with that point of view and stated that the learned deputy registrar was aware of the case mentioned.

In a further attempt to resolve the matter, the present solicitors asked Rodyk & Davidson whether they would agree to a re-hearing of the notice of taxation since no registrar's certificate had yet been issued. Rodyk & Davidson disagreed but proposed that the applicants proceed by way of a review under O 59 r 34 of the Rules of the Supreme Court 1970 ('the RSC') and they would not object to the application for a review being made out of time. Thus, this application before me.

Miss Neo for the applicants raised the following points why Rodyk & Davidson are precluded from issuing the second bill:

(i) Rodyk and Davidson are bound by their first bill and may not, without leave of court, file another bill for taxation;
(ii) for s 117(3) of the Act to apply, there must be consent from both sides that the particular bill be taxed;
(iii) if Rodyk & Davidson were to have the liberty to submit a fresh bill which was different from the first, it would give rise to undue pressure being exerted on clients to settle the first bill.

Miss Neo also argued that even though the deputy registrar was informed that the first bill was only for a lump sum of $151,000, the fact that a much higher second bill has been put up has prejudiced the applicants' position. She urged the court to invoke its inherent jurisdiction to make the order prayed for in this application.

Mr Govind for Rodyk & Davidson contended that the court cannot resort to its inherent jurisdiction to set aside the taxation. Any objection should have been taken on the date of the taxation itself. The deputy registrar was informed of the amount of the first bill and he duly taxed it down to an amount equivalent to the first bill which the deputy registrar found to be fair. What the

applicants should have done was to ask for a review under O 59 r 34 of the RSC. He also referred to the Malaysian case *Siew Kuen Williams* v *Yong Siew In.*[2]

In view of the importance of the points raised in this application to the legal profession on a whole, I thought it would be useful to have the views of the Law Society. At the adjourned hearing, Mr Karthigesu appeared as amicus curiae. I am most grateful for the assistance he has rendered this court.

English common law position

At this juncture I will refer briefly to the position in England. Prior to the Solicitors' Remuneration Act General Order 1920, the solicitor was bound by the bill which he had delivered to his client, whether it be a lump sum bill or an itemized bill. Such a bill could not be withdrawn or altered without the leave of court and such leave would only be granted where a mistake or omission was proved to the satisfaction of the court: see *Loveridge* v *Botham*;[3] *Re Carven* ;[4] *Re Walters*;[5] *Re Heather*[6] and *Re Holroyde & Smith.*[7] More recently this rule was applied by the Court of Appeal in *Chappell* v *Mehta.*[8]

There are, however, two other cases to which special mention should be made: *Re Tilleard*[9] and *Re Thompson.*[10] The facts in *Re Tilleard*[9] are these. There a solicitor of a railway company delivered a lump sum bill for two items: (i) £525 for attendances and correspondences for a period of above one year; and (ii) £525 for travelling and other incidental expenses. Subsequently the solicitor delivered a rider to the bill containing the particulars and charges in detail in respect of the two items. The particulars amounted in the whole to £1,246, 16s, 11d, of which £789, 9s, 6d related to the first item and £457, 7s, 5d to the second. The court ordered the bill to be taxed and held that the rider formed no part of the bill. In taxing the bill, the Taxing Master received the rider and allowed in respect of the first item the sum of £521, 8s, 6d and in respect of the second the sum of £355, 9s, 5d. The railway company petitioned for a review of the taxation on the ground that the taxation should have proceeded without regard to the rider. The company argued that to allow the items in the rider to be taxed would be to permit a supplementary or new bill to be delivered, which should only be permitted upon a special application for that purpose. Romilly MR held that it was in order for the Taxing Master to take the rider into consideration. He explained it thus at p 481-2:

> ... it is open to the solicitor who charges such an item to give evidence of what did really occur and how it is made up ... If the question before the Taxing Master had been whether the solicitor was entitled to augment the 500 guineas to £789, I think he was not at liberty so to do. The solicitor says, 'I claim in respect of this item 500 guineas. You ask for an explanation: you are entitled to one, and this charge of 500 guineas is made up of items in respect of which I insist I was entitled to charge £790, but I only charge £525.' He does not alter his bill; the charge is still £525, and he cannot claim any more than that sum, but he is entitled to take all these items in and have them taxed for the purpose of showing how he makes out that the 500 guineas is due to him. It was the reason why I directed the taxation of this bill, and, if the Taxing Master had allowed more than 500 guineas upon it, I should have held that it was an improper allowance, and I should have disallowed the excess beyond the 500 guineas.

It should be noted that in *Re Tilleard*[9] the rider was given to explain the lump sum bill tendered, and though the total amount in the rider exceeded the two amounts in the lump sum bill, the solicitors were claiming only the amount stated in the lump sum bill.

In *Re Thompson*,[10] the solicitors sent a bill to the client and in the forwarding letter mentioned that the bill did not include charges for all matters. The letter also stated that if the bill was paid within eight days it would be in full discharge; otherwise the solicitors would have the liberty to withdraw it. The bill was not so paid and it was withdrawn. Cotton LJ said at p 448:

> Now it has been well established that when a solicitor sends in his bill, he gives the client to whom he sends it a right to have that bill taxed. That rule was laid down to prevent any attempts being made by solicitors to impose on clients, who did not know what the proper charges were, by sending in a bill which would not stand taxation, and then, when taxation was insisted on or threatened, sending in another bill which they knew could stand taxation.

He went on to hold that the condition there was not one which ought to be allowed or which a solicitor could impose upon his client; but in an appropriate case a solicitor could reserve to himself the right to withdraw or alter a bill on condition, provided the condition is fully and clearly stated to the client.

Lindley LJ labelled the condition a 'catching' but not a 'fair' condition. While he accepted that a solicitor could impose a condition in the bill, that condition must be one which was fairly imposed. He held in the circumstances of that case that the bill was not drawn up in good faith.

The Solicitors' Remuneration Act General Order 1920 brought about a change. The 1920 Order was replaced by the Solicitors' Remuneration (Gross Sum) Order 1934. The effect of this change was explained by Scott LJ in *Re Taxation of Costs, Re Solicitors*[11] at p 72 as follows:

> The present position is that by the Solicitors' Remuneration (Gross Sum) Order 1934, the remuneration of a solicitor may, at the option of the solicitor, be by a gross sum in lieu of by detailed charges: 'Provided that ... the client may require that a detailed bill of charges shall be delivered and the solicitor shall thereupon comply with the requisition and any bill so delivered shall be subject to taxation ...'. Prima facie, that means that the taxed detailed bill would take the place of the original bill for a gross sum for all purposes and

> the solicitor would be entitled to payment of its amount, and that, in my view, is the meaning of the order. That construction is supported by the words which follow: 'as if the provisions of this order with respect to the regulation of remuneration by gross sum had not been made'. In other words, the earlier bill for a gross sum is ruled out for all purposes. I cannot see how the cases which were decided before the making of the Solicitors' Remuneration Act General Order 1920, the predecessor of the Order of 1934, can affect the construction of the language used in those Orders which seems to me to be clear.

I should also add that Scott LJ and the other two Lords Justices also cast doubts whether the older authorities, including *Re Tilleard*,[9] was good law.

However, in the more recent case *Chappell* v *Mehta*,[8] the Court of Appeal did not appear to disapprove of the older cases and instead applied the judgment in *Re a Solicitor*[12] at p 49 where Uthwatt J said 'there is undoubtedly jurisdiction in the court to allow a solicitor to withdraw a bill and to deliver a fresh bill. There are old authorities to that effect and recently the Court of Appeal in *Peter Thomas* v *Smith*[13] exercised that power in circumstances which, so far as can be gathered from the only available material, were exceedingly like those of the present. The question whether that power ought to be exercised in any particular case depends on all the circumstances of that case'. Lawton LJ explained the position in this way in *Chappell*[8] at p 351:

> In general solicitors should deliver bills which are final bills, and they are not usually allowed to amend their bills once they have delivered them. This is in the interests of the clients, and the courts have always taken a strict view about solicitors' responsibilities to their clients. But there is clearly jurisdiction for the court in special circumstances to allow solicitors to withdraw their bills. It is for the court to decide whether special circumstances arise. If the solicitors have acted honestly then maybe they should be allowed to have their original bills withdrawn.

Position in Singapore

Mr Karthigesu in his submission contended that what applies in Singapore is the pre-1920 English position. He argued that in relation to the present case Rodyk & Davidson were not entitled to withdraw the first bill and substitute in its place the second bill. What Rodyk & Davidson should have done was to itemize the first bill and that bill should be the one to be taxed. He also submitted that the deputy registrar by taxing off the difference between the first bill and the second bill, did tax neither.

Under the Legal Profession Act, it is clear that in respect of both contentious and non-contentious work, the solicitor and client can agree as to costs: see s 106 and 108 of the Act. Where there is no agreement on costs, the Act does not expressly provide whether the solicitor has the option to deliver a lump sum bill or must every bill be itemized. The case *Haw Par Brothers International Ltd* v *Harry Lee Wee*[14] seems to imply that a solicitor could deliver a lump sum bill.

As Rodyk & Davidson relied upon s 117(3) of the Act to have the second bill taxed, it may be useful for me to set out the relevant provisions of s 117:

> 117(1) An order for the taxation of a bill of costs delivered by any solicitor may be obtained on a petition of course by the party chargeable therewith, or by any person liable to pay the bill either to the party chargeable or to the solicitor, at any time within one year from the delivery of the bill, or, by the solicitor, after the expiry of one calender month and within one year from the delivery of the bill.
>
> (2) ...
>
> (3) In any case where a solicitor and his client consent to taxation of a solicitor's bill the registrar may proceed to tax the bill notwithstanding that there is no order therefor.

A case which is similar to the present is *Re Bill of Costs of the Solicitors for the Trustees of the Estate of Syed Ahmad bin Abdulrahman Alsagoff (deceased)*[1] mentioned above. There the solicitors sent a lump sum bill for $125,000 as costs, plus $9,142.25 as disbursements. Following the clients' request to submit the bill for taxation, the solicitors requested their clients to return the bill for cancellation and reserved the right to submit a fresh bill for taxation at a greater amount. On the return of the lump sum bill, the solicitors sent the clients a second bill for $167,025 plus disbursements, which bill was submitted for taxation. The learned deputy registrar ruled that the solicitors were bound by the first bill, which could only be withdrawn with leave of the court. The solicitors appealed. The honourable Chief Justice dismissed the appeal and directed that 'no more than the original lump sum bill was to be allowed on taxation'.

The Malaysian case *Siew Kuen Williams*[2] relied upon by Rodyk & Davidson must be viewed in the light of the express provisions in the Malaysian Legal Profession Act which are similar in terms to the Solicitors' Remuneration (Gross Sum) Order 1934 and which read:

> 121(1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to s 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:
>
> Provided that –
>
> (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him in lieu of the cost a bill containing detailed items, *and the gross sum bill shall thereupon be of no effect;*
>
> (b) ...

(c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation and the advocate and solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require. (emphasis added)

There, Siti Norma Yaakob J ruled that in view of the words 'the gross sum bill shall thereupon be of no effect', the advocate could present an itemized bill in excess of the amount stated in the gross sum bill. She relied upon *Re Taxation of Costs, Re Solicitors*.[11]

It is clear from s 117(1) and (3) of our Legal Profession Act that a solicitor may only have his bill taxed after having obtained an order of court on a petition, unless there is consent by the solicitor and client that the particular bill be taxed. In this case, in their letter of 16 May 1986, the applicants expressly asked that the first bill be taxed. They did not ask for a fresh bill. Therefore there was no consent by the applicants to the second bill being taxed. Admittedly s 123 of the Act provides that a bill of costs for taxation as between solicitor and client 'shall be drawn in the manner provided by the Rules of the Supreme Court', which in effect means that it should be itemized. But I do not think it can be argued that by requesting the first bill to be taxed, the applicants have therefore consented to a fresh bill being drawn up for a substantially increased amount. I accept the submission of Mr Karthigesu that what should have been done by Rodyk & Davidson was to have the first bill itemized and not draw up a fresh bill for a substantially different sum. That should suffice to dispose of this application in favour of the applicants.

I will deal next with the more general question whether Rodyk & Davidson were entitled to substitute a fresh bill in place of the one tendered without leave of court. Obviously, if there was an agreement between the parties that could be done. But here there was no agreement of the clients. Notwithstanding the doubts cast by the Court of Appeal (clearly obiter) in *Re Taxation of Costs, Re Solicitors*[11] on the older authorities, I tend to think that those authorities are still good law. It is true that in the older authorities the mischief that the court had to deal with was the situation of a solicitor who put up a high bill and when contested subsequently submitted a lower bill in order to avoid having to bear the costs of taxation under the one-fifth rule: see footnote 2 to para 174, 44 *Halsbury's Laws of England*. This aspect was alluded to by Jessel MR in *Holroyde* v *Smith*[7] at p 723 as follows:

> Now that is exactly what he cannot do. He cannot, to adopt an expression used by a counsel 'try it on'. If he puts in items which he is not entitled to charge, but which depend on a client's liberality, it is not open to him to afterwards withdraw the charges if objected to and send in another bill. The law does not permit that.

The fact situation in our present case is admittedly in the reverse. Here the second bill put up is substantially more than the first bill. The objection to such a practice should be obvious. To allow a solicitor to freely substitute a bill would encourage pressure being brought to bear on the client to accept the first bill which the client has asked to be taxed in the first place. Lest it be averred that the present case is similar to *Re Tilleard*[9] let me say straightaway it clearly is not. I expect every solicitor, before submitting his bill to a client, to carefully scrutinize the amount of work he has put in for that client and make his claim accordingly. And he should and must be able to justify it when called upon to do so. In my view the rationale of the earlier authorities is just as valid for the fact situation in the present case. To countenance otherwise would mean that the courts do encourage solicitors to bargain with clients and to put pressure on clients to accept the amount a solicitor would charge. It could open the door to the most undesirable or irresponsible kind of conduct and undermine the public's confidence in the integrity of the profession. In the absence of statutory provisions approving such a practice, I am not inclined to sanction it. This is an honourable profession and must be seen to be so.

I am not for a moment suggesting that Rodyk & Davidson had any dishonourable intention in making the substitution. But as Rodyk & Davidson have not applied or obtained leave of court to withdraw their first bill, they are not at liberty to do so. I should add that the first bill was not tendered as a conditional bill either.

I recognize that it is a fairly common practice in the profession for a solicitor to send a lump sum bill based upon a very rough estimate, without going too much into details. But if a solicitor should wish to reserve to himself a right to withdraw the bill in the event that the client should ask him to submit the bill for taxation, it seems to me only fair that he should at the time of the submission of the bill make this point very clear to the client including the basis upon which the lump sum bill was drawn. The client should also be advised that if the bill was not accepted and a detailed bill had to be drawn up for taxation, it could very well be for a larger amount than the amount claimed in the lump sum bill.

There is one other point raised by Mr Karthigesu – that the deputy registrar by merely deducting the difference between the first and the second bills did not tax any bill. I agree with this submission. The deputy registrar should have taxed the second bill without being restrained by the lump sum claimed in the first bill. Rodyk & Davidson should have been required to justify all the items of claim. No such exercise was carried out. In my view, the taxation was no taxation at all.

For the above reasons, I would, in exercise of the inherent jurisdiction of this court, set aside the notice of

taxation and the Bill of Costs No 64/1987 and declare the taxation proceedings void. Rodyk & Davidson raised the issue of estoppel based on the failure on the part of the applicants to attend the taxation on 20 January 1987. They relied on s 117 of the Evidence Act (Cap 97, 1985 Ed). I do not think estoppel applies in the circumstances of this case.

Order accordingly.

Solicitors: *Rodyk & Davidson*; *Tan Rajah & Cheah*; *Joseph Hoo Morris & Kumar.*

Reported by *PS Ranjan*

Re Great Eastern Hotel (Pte) Ltd

HIGH COURT (SINGAPORE) – COMPANIES WINDING-UP NO 578/85
GRIMBERG JC
8 OCTOBER 1988

Companies and Corporations – Winding up – Petition brought by member – Allegation of inability to pay debts – Allegation that directors acted in their own interests or in a manner unfair or unjust to other members – Just and equitable ground – Insolvency – Test for – Debts – Meaning of – Allegation of oppression by directors – Companies Act (Cap 185, 1970 Ed), ss 132D, 161, 216, 251 & 254

Statutory Interpretation – Debts – Distinction between debt founding a petition for winding up and debt provable in a winding up – Companies Act (Cap 185, 1970 Ed), s 254(1)(e)

In this case a winding-up petition was brought against Great Eastern Hotel (Pte) Ltd ('the Company') by one of its members on the grounds:

(a) that the Company was unable to pay its debts within the meaning of s 254(1)(e) of the Companies Act ('the Act');
(b) that the directors had conducted the affairs of the Company in their own interest rather than in the interest of the members as a whole, or in a manner which appeared to be unfair or unjust to other members within the meaning of s 254(1)(f) of the Act; and/or
(c) that it was just and equitable that the Company be wound up under s 251(1)(i) of the Act.

Alternatively, the petitioner sought a winding-up order, or an order for the purchase of his shares by the Company, under s 216(2)(d) and (f) respectively of the Act, on the grounds that the affairs of the Company were being conducted or the powers of the directors were being exercised in a manner oppressive to the petitioner.

Of the petitioner's various complaints, only three survived by the time the trial was concluded.

The first of the three complaints was that the Company made payments totalling $180,000 by way of commission but that the payments were not approved by a resolution of the directors and that the vouchers by which these payments were acknowledged were signed by unidentified persons. On behalf of the company, it was said that the sum was paid to a certain Jimmy Toh who represented 'a few persons' as consideration for the introduction of the Bank of China ('BOC') to the Company which introduction resulted in BOC giving a loan of $9 million to the Company.

The second allegation was that Mr Ang Kho Thang, who had been the managing director at all material times of the Company, had taken the sum of $30,000 from the Company without authorization or any supporting document.

The third complaint was that an allotment of a total of 1,200,000 shares in the Company to three allottees, namely, Ang Kho Thang & Sons Pte Ltd ('Angco'), Ong Teow Chuie & Sons Pte Ltd ('Ongco'), and to one Mr Hung Hiong Chong ('Hung'), were ultra vires art 45 of the articles of association of the Company. Angco, Ongco and Hung were in 1979 shareholders of a company called Oasis Holdings Pte Ltd ('Oasis'). Oasis had provided assistance to the company in obtaining financing from BOC and it was common ground that Oasis would be entitled to an allotment of 2,500,000 shares in the Company at par, equivalent to the moneys provided by Oasis to the Company for the purposes of capital repayments to BOC. As a result, a total of 637,000 shares were allotted to Oasis, which allotment was recognized by the parties as representing the first tranche of the 2,500,000 shares Oasis was to receive. It was also recognized by the parties that the allotment of 1,200,000 shares objected to in the petition represented the second tranche of the 2,500,000 shares to which Oasis was entitled. It was contended for the petitioner that the directors' resolution (by which it was resolved that the shares comprised in the second tranche be allotted to Angco, Ongco and Hung) was a departure from the mandate of the shareholders expressed at an extraordinary general meeting of the Company held on 22 April 1981 at which it was resolved, inter alia, that applications for the transfer by Oasis of shares allotted to it under its agreement with the Company should be made in writing to the board of the Company, and would be subject to board approval; and secondly, that the Company 'be not authorized to adopt s 132D of the Company's (sic) Act in relation to the allotment of shares'.

At the annual general meeting of the Company held on 7 October 1983, an ordinary resolution in the following terms was passed: 'That full authority be and is hereby given to the directors pursuant to s 132D of the Companies Act (Cap 185), to issue shares of the Company in such numbers and to such persons and for such consideration as they think fit; such authority to continue in force until the conclusion of the annual general meeting next after this date.'

In regard to the petitioner's contention that the Company was unable to pay its debts, it was contended on his behalf that the test for solvency in law is failed if a deficiency exists of current assets over current liabilities ('the quick assets test') and that a company can only be said to be solvent if it is able to pay its debts 'out of its own money'.

The court was asked in the event that the court was not prepared to make a winding-up order simpliciter, to consider as an alternative an order under s 216(2)(d) of the Act by which the winding-up order would not take effect for a period of, say, two weeks, the order to be permanently stayed or withdrawn if the petitioner's shares in the Company were purchased on or before the expiry of that period.

Held, dismissing the petition:

(1) The payments to Jimmy Toh of the commission amounting to $180,000, although not paid pursuant to a resolution of the directors were referred to subsequently at a general